Table of Contents

	Page
Table of Authorities	ii
INTEREST OF AMICUS	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
I. STATES HAVE HISTORICALLY USED FEDERAL IMMIGRATION CLASSIFICATIONS AND DOCUMENTATION REQUIREMENTS AS TOOLS OF INVIDIOUS DISCRIMINATION AGAINST ASIANS IN AMERICA	4
II. SECTION 21.031 AND OTHER STATE LEGISLATIVE CLASSIFICATIONS DIRECTED AGAINST UNDOCUMENTED ALIENS WILL INEVITABLY HAVE A DISCRIMINATORY IMPACT UPON RACIAL AND ETHNIC MINORITIES	14
CONCLUSION	21

Table of Authorities

Cases	Page
Alvorado v. El Paso Independent School District, 426 F. Supp. 575 (W.D. Tex. 1976), aff'd, 593 F.2d 577 (5th Cir. 1979)	16
Asakura v. City of Seattle, 265 U.S. 332 (1924)	11
Briscoe v. Bell, 432 U.S. 404 (1977)	15
California Delta Farms, Inc. v. Chinese American Farms, Inc., 207 Cal. 298, 278 P. 227 (1929)	10
Castaneda v. Partida, 430 U.S. 482 (1977)	15
The Chinese Exclusion Case, 130 U.S. 581 (1889)	9,12
Cisneros v. Corpus Christi Independent School District, 324 F. Supp. 599 (S.D. Tex. 1970), aff'd, 467 F.2d 142 (5th Cir. 1972) (en banc), cert. denied, 413 U.S. 930 (1973) ...	16
Cockrill v. California, 268 U.S. 258 (1925)	10
Doe v. Plyler, 628 F.2d 448 (5th Cir. 1980)	15
Ex parte Ah Cue, 101 Cal. 197 (1894)	13

	Page
Ex parte Ah Pong, 19 Cal. 106 (1891)	6
Fong Yue Ting v. United States, 149 U.S. 698 (1893)	14
Frick v. Webb, 263 U.S. 326 (1923)	10
Graves v. Barnes, 343 F. Supp. 704 (W.D. Tex. 72), aff'd sub nom., White v. Regester, 412 U.S. 755 (1973)	15
Hernandez v. Texas, 347 U.S. 475 (1954)	15
Keyes v. School District No. 1, 413 U.S. 189 (1973)	15
Morales v. Shannon, 516 F.2d 411 (5th Cir.), cert. denied, 423 U.S. 1034 (1975)	16
Ozawa v. United States, 260 U.S. 178 (1922)	10
People ex rel. Attorney General v. Naglee, 1 Cal. 232 (1850)	6
Porterfield v. Webb, 263 U.S. 225 (1923)	10
State v. Hirabayashi, 233 P. 948 (Wash. 1925), aff'd, 246 P. 577 (1926), aff'd, 277 U.S. 572 (1928)	10
Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948)	11
Tape v. Hurley, 66 Cal. 473, 6 P. 129 (1885)	8

Page

Terrace v. Thompson, 263 U.S. 197 (1923) 10

United States v. Texas Education Agency (Austin Independent School District), 467 F.2d 848 (5th Cir. 1972) (en banc); 532 F.2d 380 (5th Cir. 1976); 564 F.2d 164 (5th Cir. 1977), cert. denied, 99 S. Ct. 3106 (1979) 16

Ward v. Flood, 48 Cal. 36 (1874) 8

Webb v. O'Brien, 263 U.S. 313 (1923) 10

Yamashita v. Hinkle, 260 U.S. 199 (1922) 11

Yick Wo v. Hopkins, 118 U.S. 356 (1886) 19,20

Zamora v. New Braunsfels Independent School District, 519 F.2d 1084 (5th Cir. 1975) (per curiam) ... 16

Federal Statutes

Act of July 5, 1884, ch. 220, § 4, 23 Stat. 115 9

Act of October 1, 1888, ch. 1064, § 1, 25 Stat. 504 9

Act of April 27, 1904, 33 Stat. 428 9

Act of Oct. 3, 1965, Pub. L. No. 94-571, 66 Stat. 163 17

	Page
Chinese Exclusion Act of 1882, ch. 126, §§ 1, 14, 22 Stat. 58	1,8,9, 11,13
Geary Act of 1892, ch. 60, 27 Stat. 25	13
Immigration Act of 1924, ch. 190, 43 Stat. 153	9
Immigration and Nationality Act of 1965, § 202, 8 U.S.C. § 1152	17

State Statutes

Act of May 17, 1861, ch. 401, § 93, 1861 Cal. Stats. 448	6
Ch. 51, § 1, 1880 Cal. Stats.	7
Ch. 117, § 1, 1885 Cal. Stats. 99	8
Ch. 140, §§ 6, 13, 1891 Cal. Stats. ...	12
Ch. 159, 1863 Cal. Stats. 194	8
Ch. 193, § 33, 1893 Cal. Stats. 253 ...	8
Ch. 329, § 8, 1860 Cal. Stats.	8
Ch. 417, 1915 Cal. Stats. 690	11
Ch. 685, § 1, 1921 Cal. Stats. 1160 ...	8
California State Constitution of 1879	6,7

Page

Fish and Game Code, § 990, ch. 181, § 3, 1945 Cal. Stats. 660 11

Foreign Miners' License Tax, ch. 97, § 1, 1850 Cal. Stats. 221 6

Game Laws, ch. 339, § 2, 1923 Cal. Stats. 696 11

General School Law of California, § 1662, 1880 Cal. Stats. 8

Texas Education Code, § 21.031 ..... passim

Other Authorities

2 U.S. Code & Cong. Adm. News 1653 (1952) 9

F. Chuman, The Bamboo People: The Law and Japanese Americans (1976) 17

M. Coolidge, Chinese Immigration (1909) 6,17

Ferguson, "The California Alien Land Law and the Fourteenth Amendment," 35 Cal. L. Rev. 61 (1947) 10

Gordon, "The Racial Barrier to American Citizenship," 93 U. Pa. L. Rev. 237 (1943) 9

Page

J. Hendrick, The Education of Non-Whites in California, 1849-1970 (1977) 8

B. Lasker, Filipino Immigration (1931) 17

McGovney, The Anti-Japanese Alien Land Laws of California and Ten Other States, 35 Cal. L. Rev. 7 (1947) 10

North, "Asia-Pacific Illegal Aliens: A Discussion of Their Status, Limitations, and Rights Under the Law," in U.S. Commission on Civil Rights, Civil Rights Issues of Asian and Pacific Americans: Myths and Realities (1979) 19

E. Sandmeyer, The Anti-Chinese Movement in California (1939) 7,17

U.S. Commission on Civil Rights, Civil Rights Issues of Asian and Pacific Americans: Myths and Realities (1979) 1,19

U.S. Comm'n on Civil Rights, The Tarnished Golden Door: Civil Rights Issues in Immigration (1980) 17

U.S. Department of State, Bureau of Consular Affairs, Immigrant Numbers for August 1981, Vol. V, No. 11 (1981) 18

C. Wollenberg, All Deliberate Speed, Segregation and Exclusion in California Schools, 1885-1975 (1976) 8

INTEREST OF AMICUS

The Asian American Legal Defense and Education Fund (AALDEF), is a non-profit corporation established in 1974 under the laws of the States of California and New York. It was formed to protect the civil rights of Asian Americans throughout the nation through the prosecution of lawsuits and the dissemination of public information.

In the last fifteen years, there has been a dramatic increase in Asian immigration to the United States. While Asians now comprise one-third of the legal immigration to this country each year,[1/] a number of Asians are also undocumented aliens. It is AALDEF's experience that Asian undocumented aliens suffer from the most extreme forms of exploitation in all

---

1. See U.S. Comm'n on Civil Rights, Civil Rights Issues of Asian and Pacific Americans: Myths and Realities 11 (1979) (hereinafter "Civil Rights Issues"), citing annual reports of the Immigration and Naturalization Service.

aspects of their daily lives, which merely compound the burdens of race and national original that continue to disadvantage Asian Americans in general.

A primary concern of amicus is discrimination against Asian Americans on the basis of their immigration status. From the Chinese Exclusion Act of 1882 to the national origins quota system, abolished in 1965, our nation's immigration and nationality laws have repeatedly singled out Asians for exclusion and discriminatory treatment. These immigration laws, which utilized invidious racial and national origin classifications, were then used in conjunction with state laws to deny Asian Americans equal access to education, employment, business opportunities and government benefits.

As a result of this historical discrimination against Asian immigrants, amicus views with great concern state laws, such as section 21.031 of the Texas Education Code, which deprive undocumented aliens of educational

and other opportunities because of their immigration status.[2/]

SUMMARY OF ARGUMENT

State statutes have relied historically upon apparently neutral immigration classifications and documentation requirements to subject aliens to invidious discrimination. Federal immigration and nationality laws laid the groundwork for a comprehensive scheme of state statutes that successfully restricted the rights of Asian immigrants to work, travel and own property for several decades. Although racially exclusionary immigration laws are now obsolete, their ostensibly neutral character continues to provide a convenient device to discriminate against aliens residing in this country.

Section 21.031 of the Texas Education Code bears an ominous resemblance to previous

---

2. The parties have consented to the filing of this brief, and letters of consent have been filed with the Clerk.

state laws which subjected Asian immigrants to invidious discrimination. Although section 21.031 appears to apply equally to all undocumented aliens who enter the country illegally, the deprivation of tuition-free education in fact falls almost exclusively upon Mexican children. The discriminatory intent behind section 21.031 can also be inferred by the long history of discrimination against Hispanics in Texas. Since the statutory classification of undocumented aliens will inevitably burden racial and ethnic minorities, it should be subject to heightened judicial scrutiny under the Equal Protection Clause of the Fourteenth Amendment.

ARGUMENT

I. STATES HAVE HISTORICALLY USED FEDERAL IMMIGRATION CLASSIFICATIONS AND DOCUMENTATION REQUIREMENTS AS TOOLS OF INVIDIOUS DISCRIMINATION AGAINST ASIANS IN AMERICA.

Throughout history, restrictive state statutes have been used in concert with

immigration laws and alien documentation requirements to discriminate against racial and ethnic minorities. Although section 21.031, which denies tuition-free education to Mexican undocumented alien children, is one recent example, the precursors of such laws were enacted almost a century ago in a series of facially neutral state statutes that targeted Asians for invidious discrimination because of their immigration status.

The first group of Asians to immigrate in substantial numbers to the United States were the Chinese, who arrived in 1847 in California as male contract laborers in mining, railroad, agriculture and other menial occupations. As the Chinese came into competition with whites in the labor market, racist and anti-alien sentiments in the depression economy of the 1870's led to the passage of federal laws to curtail further Chinese immigration and state laws to restrict substantially the rights of Chinese who remained in this country.

Early state laws which apparently limited the opportunities of all noncitizens were in fact directed at the Chinese. As early as 1850, the California Legislature enacted the Foreign Miners' License Tax,[3] which was reproduced and translated into Chinese for mass distribution and enforced almost exclusively against Chinese aliens.[4] Moreover, Article XIX, Section 4 of the California State Constitution of 1879 proclaimed that "The presence of foreigners ineligible to become citizens is declared to be dangerous to the well-being of the State. . . ." The provision further explained that the term, "foreigners ineligible to become citizens," referred specifically to

---

3. Act of April 13, 1850, ch. 97, § 1 et seq., 1850 Cal Stats. 221, sustained in People ex ex rel. Attorney General v. Naglee, 1 Cal. 232 (1850)(repealed 1851).

4. The California Legislature subsequently attempted to make a statutorily conclusive presumption that all Chinese were "miners." Act of May 17, 1861, ch. 401, § 93, 1861 Cal. Stats. 448, invalidated in Ex parte Ah Pong, 19 Cal. 106 (1861). See M. Coolidge, Chinese Immigration 36 (1909).

Chinese, who were to be removed beyond municipal boundaries or, alternatively, placed in official Chinese ghettos.[5] And in 1880, California passed a law prohibiting the issuance of licenses for the transaction of any business or occupation to "any alien ineligible to become an elector in the state"[6]--a class that was predominantly Chinese.[7]

Other state statutes directed against Asian immigrants were couched in overtly racial terms. In the area of education, for example, California's public education law was amended in 1860 to permit separate schools for the education of "Negroes, Mongolians and Indi-

---

5. Other provisions in the 1879 State Constitution prohibited the employment of Chinese by any California corporation, Art. XIX, § 3; barred public employment of Chinese, id. § 3; and denied Chinese the right to vote and to own or inherit real property. Art. I.

6. Ch. 51, § 1, 1880 Cal. Stats.

7. See E. Sandmeyer, The Anti-Chinese Movement in California 74 (1939).

ans,"[8] but later repealed for economic reasons.[9] When efforts to exclude Chinese and Japanese children altogether from public education failed, see, e.g., Tape v. Hurley, 66 Cal. 473, 475, 6 P. 129 (1885) (Chinese); Aoki v. Deane (Japanese), specific statutory authority was created for the establishment of separate schools for Chinese and Japanese children.[10]

A major turning point occurred when Congress passed the Chinese Exclusion Act of 1882.[11] The Act initially suspended all immigration of

---

8. Ch. 329, § 8, 1860 Cal. Stats.; see also ch. 159, 1863 Cal. Stats. 194. The constitutionality of the separate school law was upheld in Ward v. Flood, 48 Cal. 36 (1874).

9. General School Law of California, § 1662 at 14, 1880 Cal. Stats.; see C. Wollenberg, All Deliberate Speed, Segregation and Exclusion in California Schools, 1885-1975 24-26 (1976).

10. Ch. 117, § 1, 1885 Cal. Stats. 99 (Chinese); ch. 193, § 33, 1893 Cal. Stats. 253 (Indians); ch. 685, § 1, 1921 Cal. Stats. 1160 (Japanese). See generally C. Wollenberg, All Deliberate Speed, id. at 28-107; J. Hendrick, The Education of Non-Whites in California, 1849-1970 (1977).

11. Act of May 6, 1882, ch. 126, § 1, 22 Stat. 58.

Chinese laborers for ten years and explicitly prohibited Chinese aliens from becoming citizens.[12] The Act was extended several times until 1904, when a permanent and total ban against all Chinese immigration was instituted.[13] Through its unprecedented use of immigration laws to create an official national policy of racial discrimination toward Chinese immigrants, Congress laid the groundwork for future state laws that would discriminate against all Asian immigrant groups.

The federal immigration classification, "aliens ineligible for citizenship,"[14] soon

---

12. Id. § 14.

13. Act of July 5, 1884, ch. 220, § 4, 23 Stat. 115; Act of Oct. 1, 1888, ch. 1064, § 1, 25 Stat. 504; Act of April 27, 1904, 33 Stat. 428. This legislation was upheld in The Chinese Exclusion Case, 130 U.S. 581, 609 (1889).

14. See generally Gordon, "The Racial Barrier to American Citizenship," 93 U. Pa. L. Rev. 237 (1945). Ineligibility for citizenship later became the basis for excluding all Japanese immigration to the United States. Immigration Act of 1924, ch. 190, 43 Stat. 153; see 2 U.S. Code Cong. & Adm. News 1653 (1952).

emerged as code words for state-sanctioned racial discrimination against Asians, primarily the Japanese. A series of alien land laws passed in the 1920's predicated ownership of land upon eligibility for citizenship. The Supreme Court in Ozawa v. United States, 260 U.S. 178, 195 (1922), sanctioned the application of such laws against "the brown and yellow races of Asia," and state courts routinely upheld their validity as applied to Asians.[15/]

---

15. See, e.g., California Delta Farms, Inc. v. Chinese American Farms, Inc., 207 Cal. 298, 308, 278 P. 227, 230 (1929); State v. Hirabayashi, 233 P. 948, 949 (S. Ct. Wash. 1925), aff'd, 246 P. 577 (1926), aff'd, 277 U.S. 572 (1928); see also Terrace v. Thompson, 263 U.S. 197, 216-21 (1923); Porterfield v. Webb, 263 U.S. 225, 233 (1923); Webb v. O'Brien, 263 U.S. 313, 324 (1923); Frick v. Webb, 263 U.S. 326, 334 (1923); Cockrill v. California, 268 U.S. 258, 263 (1925). See generally McGovney, "The Anti-Japanese Land Laws of California and Ten Other States," 35 Cal. L. Rev. 7 (1947); Ferguson, "The California Alien Land Law and the Fourteenth Amendment," 35 Cal. L. Rev. 61 (1947).

In addition, the facially neutral requirement of "ineligibility for citizenship" was used to exclude Japanese from incorporating businesses,[16] owning or possessing firearms,[17] securing public employment,[18] and obtaining pawnbroker licenses[19] and commercial fishing licenses.[20]

Alien documentation requirements also developed initially as a device for racial discrimination against Asians. Section 4 of the Chinese Exclusion Act of 1882 was apparently the earliest documentation requirement for aliens residing in the United States. It required that all Chinese laborers planning to

---

16. See Yamashita v. Hinkle, 260 U.S. 199, 200 (1922).

17. Game Laws, ch. 339, § 2, 1923 Cal. Stats. 696.

18. Ch. 417, 1915 Cal. Stats. 690.

19. See Asakura v. City of Seattle, 265 U.S. 332, 343 (1924) (provision invalidated).

20. Fish & Game Code, § 990 as amended, ch. 181, § 3, 1945 Cal. Stats. 660; see Takahashi v. Fish & Game Comm'n, 334 U.S. 410, 426 (1948) (Murphy, J., concurring).

leave the United States establish their legal presence in this country and provided that only those laborers holding a "certificate of registration" were allowed to re-enter the United States. Although the documentation requirement was repealed in 1888, it was substituted by a more malevolent statute which prohibited all Chinese laborers from returning to this country and voided all registration certificates previously issued for this purpose.[21/]

Shortly thereafter, California sought to impose its own registration requirements to restrict further the rights of Chinese within the state.[22/] According to the statute, no Chinese were to be admitted into the state without such a certificate, and they would be subject to deportation if they could not produce such identification.[23/] This documenta-

---

21. See The Chinese Exclusion Case, supra, 130 U.S. at 581, 599.

22. Ch. 140, § 13, 1891 Cal. Stats.

23. Id. § 6.

tion requirement was further used to burden the rights of Chinese to use public transportation. Section 3 of the Act required agents of all railroads, stagecoach lines and steamship lines in California to demand that Chinese produce a certificate of residence before they could purchase tickets on public carriers. The failure to produce such a certificate allowed agents to arrest the "undocumented" Chinese alien. Although this statute was subsequently declared in excess of state power, Ex Parte Ah Cue, 101 Cal. 197, 198 (1894), a California delegation later pressured Congress to adopt stricter registration requirements for Chinese.[24/]

---

24. The Geary Act of 1892, ch. 60, 27 Stat. 25, required all Chinese laborers to obtain certificates of residence within one year after passage of the act, or they would be deemed unlawfully in the United States and subject to arrest. Section 6 of the Act further provided that a Chinese could be deported unless he could "establish clearly to the satisfaction of [a] judge that by reason of accident

(footnote continued on next page)

The state statutes which built upon racist immigration laws to discriminate against Asians are now an anachronism. However, their legacy stands as a continuing reminder of how immigration classifications and documentation requirements were used as devices for discriminating against racial minorities.

II. SECTION 21.031 AND OTHER STATE LEGISLATIVE CLASSIFICATIONS DIRECTED AGAINST UNDOCUMENTED ALIENS WILL INEVITABLY HAVE A DISCRIMINATORY IMPACT UPON RACIAL AND ETHNIC MINORITIES.

It is undisputed that the primary victims of section 21.031 of the Texas Education Code are children of Mexican origin, since almost

---

(footnote continued from previous page)

sickness, or other unavoidable cause, he has been unable to procure his certificate, and to the satisfaction of the court, and by at least one credible white witness, that he was a resident of the United States at the time of the passage of the act." The Supreme Court upheld the constitutionality of this statutory provision in Fong Yue Ting v. United States, 149 U.S. 698, 732 (1893).

all undocumented aliens in Texas are Mexican.[25] Because immigration status has historically been used to discriminate against racial and ethnic minorities,[26] section 21.031 should be considered within the broader context of discrimination against Hispanics as a minority group in Texas.

Courts have noted that Hispanics are an identifiable ethnic minority entitled to protection under the Equal Protection Clause, see, e.g., Keyes v. School District No. 1, 413 U.S. 189, 197 (1973), and it is well established that Hispanics in Texas have been subject to a long history of invidious discrimination in such areas as education, employment, economics, health and politics.[27] In

---

25. See Doe v. Plyler, 628 F.2d 448, 451 n.6 (1980).

26. See point I supra.

27. Graves v. Barnes, 343 F. Supp. 704, 728 (W.D. Tex. 1972), aff'd sub nom., White v. Regester, 412 U.S. 755 (1973); see also Briscoe v. Bell, 432 U.S. 404, 406 & n.2 (1977); Castaneda v. Partida, 430 U.S. 482, 487, 495 (1977); Hernandez v. Texas, 347 U.S. 475, 478 (1954).

particular, courts have recognized the state's repeated failure to provide adequate educational and bilingual services to Hispanic children in Texas schools.[28/] In view of the widespread discriminatory practices against Hispanics in Texas, particularly in the area of education, section 21.031 should be regarded as yet another example of discrimination against Mexicans based on their national origin.

---

28. See, e.g., Alvorado v. El Paso Independent School District, 426 F. Supp. 575 (W.D. Tex. 1976), aff'd, 593 F.2d 577 (5th Cir. 1979); United States v. Texas Education Agency (Austin Independent School District), 467 F.2d 848, 863-64, 869-70 (5th Cir. 1972) (en banc); 532 F.2d 380, 391 (5th Cir. 1976); 564 F.2d 164, 174 (5th Cir. 1977), cert. denied, 99 S. Ct. 3106 (1979); Zamora v. New Braunsfels Independent School District, 519 F.2d 1084, 1084 (5th Cir. 1975) (per curiam); Morales v. Shannon, 516 F.2d 411 (5th Cir. 1975), cert. denied, 423 U.S. 1034 (1975); Cisneros v. Corpus Christi Independent School District, 324 F. Supp. 599, 617-21 (S.D. Tex. 1970), aff'd, 467 F.2d 142 (5th Cir. 1972) (en banc), cert. denied, 413 U.S. 930 (1973).

Moreover, in light of current immigration trends, the discriminatory impact of statutory classifications directed at undocumented aliens will fall primarily upon aliens of certain distinct racial and ethnic groups--i.e., Mexicans and Asians. Largely because of previous restrictive immigration laws,[29] numerical quotas for Mexico, the Philippines, China and Hong Kong have been continuously oversubscribed,[30] while the quotas for Euro-

---

29. Mexican immigration was cut by almost 50% when the 1976 amendments to the Immigration and Nationality Act imposed a per-country limitation of 20,000 upon Western Hemisphere countries. Act of October 3, 1965, Pub. L. No. 94-571, 66 Stat. 163; see U.S. Comm'n on Civil Rights, The Tarnished Golden Door: Civil Rights Issues in Immigration 15 (1980) (hereinafter "The Tarnished Golden Door").

For a general discussion about immigration restrictions upon Asians, see M. Coolidge, Chinese Immigration, supra; E. Sandmeyer, The Anti-Chinese Movement in California, supra; F. Chuman, The Bamboo People: The Law and Japanese Americans (1976); H. Lasker, Filipino Immigration (1931).

30. See The Tarnished Golden Door, id. at 17. There is an annual limit of 20,000 immigrants for each independent country, Immigration and Nationality Act § 202(a), 8 U.S.C. § 1152(a) (1980), and a limit of 600 immigrants for each dependent area, such as Hong Kong. Id. § 202(c); 8 U.S.C. § 1152(c) (1980).

pean and other countries are seldom filled. In August 1981, for example, certain family relatives of citizens and resident aliens seeking to emigrate from the Philippines faced waiting periods of three to eleven years, while the spouses and unmarried sons and daughters of Mexican resident aliens faced backlogs of thirteen years. In addition, there was a waiting period of up to twelve years for certain immigrant workers from Hong Kong and the Philippines.[31] Given the enormous backlogs and lengthy delays in the visa petitioning process for Mexican and Asian immigrants, it is not surprising that many will seek to come to the United States even temporarily and eventually become part of this country's undocumented alien population.[32]

---

31. See U.S. Dep't of State, Bureau of Consular Affairs, Immigrant Numbers for August 1981, Vol. V, No. 11 (1981).

32. Although the total number of Asian undocumented aliens is unknown, at least 9,500 to 16,000 have been apprehended annually by the Immigration and Naturalization Service over

(footnote continued on next page)

In Yick Wo v. Hopkins, 118 U.S. 356 (1886), this Court invalidated a facially neutral California laundry ordinance which revealed none of the prejudices against Chinese aliens to whom it had been applied exclusively. The Court

---

(footnote continued from previous page)

the past few years. Most Asian undocumented aliens entered the country with valid entry documents but subsequently violated the terms of their visas. See North, "Asia-Pacific Illegal Aliens: A Discussion of Their Status, Limitations, and Rights Under the Law," Civil Rights Issues, supra note 1, at 238-39.

With respect to Asian undocumented aliens, it is the experience of amicus that many live in densely-populated Asian American communities of urban areas throughout the country. Most are relegated to low-paying jobs with long working hours, often as garment factory, restaurant or health care workers. Fearful of reprisals by their bosses, Asian undocumented aliens hesitate to complain about their employers' frequent refusals to pay minimum wage or overtime compensation and are afraid to participate in worker organizing efforts to secure better working conditions. They are similarly reluctant to complain to landlords about poor housing conditions, to seek police assistance if they are victims of crime, or to obtain medical care in the event of illness. At the same time, Asian undocumented aliens pay more in taxes than they receive in social services and make substantial contributions to the well-being of Asian American communities and the general society. See generally Civil Rights Issues, id. at 181, 582.

concluded:

> The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted, that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which in the eye of the law is not justified.

Id. at 374.

Like the superficially neutral state ordinance at issue in Yick Wo v. Hopkins, supra, section 21.031 apparently applies to undocumented aliens of all races and nationalities. However, the classification is inevitably discriminatory against Mexican aliens, in light of the ethnic background of virtually all undocumented aliens in Texas and the long history of discrimination against Hispanics in that state. Accordingly, section 21.031 should be subject to the heightened judicial scrutiny traditionally accorded to racial and national origin classifications.

CONCLUSION

For the reasons set forth above, the judgment of the court below should be affirmed.

Respectfully submitted,

MARGARET FUNG
STANLEY MARK
Asian American Legal Defense
and Education Fund
350 Broadway, Suite 308
New York, New York 10013
(212) 966-5932

BILL LANN LEE*
10 Columbus Circle
Suite 2030
New York, New York 10019
(212) 586-8397

Attorneys for Amicus Curiae

*Attorney of Record

Dated: September 28, 1981
New York, New York